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6/25/01  
vly

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

CLEVELAND HANKERSON,  
Petitioner

v.

DONALD ROMINE,  
Respondent

CIVIL NO. 1:CV-00-1836  
(Judge Rambo)  
(Magistrate Judge Blewitt)

FILED  
HARRISBURG, PA

JUN 22 2001

ORDER

MARY E. D'ANDREA, CLERK  
PER [Signature] DEPUTY CLERK

Before the court in the captioned case is a report of the magistrate judge in which he recommends that the instant petition for writ of habeas corpus filed pursuant to 28 U.S.C. § 2241 be dismissed. Petitioner has filed objections to the report to which the government has responded.

The essence of the petition is the argument that the rule announced in Apprendi v. New Jersey, 530 U.S. 466 (2000), should be applied retroactively to his case. Several courts have held that Apprendi is not retroactively applicable on collateral attack. United States v. Sanders 247 F.3d 139 (4<sup>th</sup> Cir. 2001); Jones v. Smith, 231 F.3d 1227 (9<sup>th</sup> Cir. 2000); Levan v. United States, 128 F. Supp. 2d 270, 275-76 (E.D. Pa. 2001); United States v. Gibbs, 125 F. Supp.2d 700, 703 (E.D. Pa. 2000).

Certified from the record  
Date 6/22/01

Mary E. D'Andrea, Clerk

Per [Signature]  
Deputy Clerk

This judge finds no reason to disagree with the magistrate judge that Appendi does not apply retroactively. **IT IS THEREFORE ORDERED THAT:**

- 1) The court adopts the report and recommendation of Magistrate Judge Blewitt.
- 2) The petition is dismissed for failure to state a cause of action.
- 3) This court declines to issue a certificate of probable cause.
- 4) The clerk of court shall close the file.

  
SYLVIA H. RAMBO  
United States District Judge

Dated: June 22, 2001.

UNITED STATES DISTRICT COURT  
FOR THE  
MIDDLE DISTRICT OF PENNSYLVANIA

\* \* MAILING CERTIFICATE OF CLERK \* \*

June 22, 2001

Re: 1:00-cv-01836 Hankerson v. Romine

True and correct copies of the attached were mailed by the clerk  
to the following:

Cleveland Hankerson  
USP-ATLANTA  
83507-020  
Box PMB  
Atlanta, GA 30315

Dulce Donovan, Esq.  
U.S. Attorney's Office  
228 Walnut Street  
P.O. Box 11754  
Harrisburg, PA 17108

cc:

Judge	( )	Pro Se Law Clerk
Magistrate Judge	( )	INS
U.S. Marshal	( )	Jury Clerk
Probation	( )	
U.S. Attorney	( )	
Atty. for Deft.	( )	
Defendant	( )	
Warden	( )	
Bureau of Prisons	( )	
Ct Reporter	( )	
Ctroom Deputy	( )	
Orig-Security	( )	
Federal Public Defender	( )	
Summons Issued	( )	with N/C attached to complt. and served by:
	( )	U.S. Marshal ( ) Pltf's Attorney ( )
Standard Order 93-5	( )	
Order to Show Cause	( )	with Petition attached & mailed certified mail
	( )	to: US Atty Gen ( ) PA Atty Gen ( )
	( )	DA of County ( ) Respondents ( )
Bankruptcy Court	( )	
Other _____	( )	

MARY E. D'ANDREA, Clerk

DATE:

6/22/01

BY:

  
Deputy Clerk